

**RESTRICTED – EXECUTIVE COMMITTEE**

EC(00)16

**TO: EXECUTIVE COMMITTEE**

**MINISTERIAL CONFLICTS OF INTEREST**

1. OFMDFM have been examining issues relating to potential conflicts of interest for Ministers. This paper sets out the legal advice received.
2. The source documents are the Pledge of Office, and the Code of Conduct to which it refers, which is set out in Annex A to Strand One of the Belfast Agreement, and reproduced in Schedule 4 to the Northern Ireland Act 1998.
3. A failure satisfactorily to resolve a conflict of interest leads to bias, real or perceived. Several provisions of the source documents relate to bias. The Pledge of Office requires a Minister to affirm to discharge in good faith all the duties of office (paragraph (a)), and paragraph (c) requires an affirmation to serve all the people of Northern Ireland equally"; paragraph (g) requires compliance with the Ministerial Code of Conduct.
4. Relevant provisions of that Code require of Ministers that at all times they:-
  - ♦ observe the highest standards of propriety and regularity involving impartiality, integrity and objectivity in relationship to the stewardship of public funds (paragraph i);
  - ♦ operate in a way conducive to promoting good community relations and equality of treatment (paragraph vi);

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- ♦ [do] not use information gained in the course of their service for personal gain; nor seek to use the opportunity of public service to promote their public interests (paragraph vii);
- ♦ declare any personal or business interests which may conflict with their responsibilities. The Assembly will retain a Register of Interests. Individuals must ensure that any direct or pecuniary interests which members of the public might reasonably think could influence their judgement are listed in the Register of Interests (paragraph ix); and
- ♦ follow the seven principles of public life set out by the Committee on Standards in Public Life (paragraph iv).

### 5. Relevant principles include:-

- ♦ **Selflessness**

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

- ♦ **Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations which might influence them in the performance of their official duties.

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### ♦ Objectivity

In carrying out public business, including making contracts, or recommending individuals for rewards or benefits, holders of public office should make choices on merit.

### ♦ Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

### ♦ Leadership

Holders of public office should promote and support these principles by leadership and example.

6. The Pledge of Office, and all its elements, is a document of both legal and political consequence. The Assembly is the judge of whether a Minister should be excluded from office for failure to observe any term of the Pledge (section 30 of the NIA). But any breach of those provisions cited above could have personal legal consequences for Ministers under the corruption laws, and public law consequences for the Minister's department, in that a failure to act with the propriety which the Pledge of Office requires could result in any related decision being quashed by the courts on judicial review.
7. Conflicts of interest also raise issues of public perception and public confidence in the unfettered, independent judgment of Ministers and their departments. That is primarily a political issue, but there could be legal consequences. A less than clear resolution of the conflict can result in

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successful challenge, without necessarily impugning the integrity of the Minister. It will be recalled that the House of Lords in the Pinochet case quashed its own decision because of the appearance of bias. It did not decide that Lord Hoffman, with his Amnesty connections, was in fact biased. The potential for bias can suffice.

8. It might not always prove easy for Ministers to convince others that their decisions were not tainted by bias and lack of objectivity. And, in any event, the courts are more likely to decide the issue on the appearance of bias, rather than try to look in the mind of the Minister to discern whether in fact he was prejudiced one way or another. The draft Ministerial Code is therefore properly phrased in cautious terms.
9. The draft has a number of relevant provisions. Paragraph 10.2 suggests that Ministers should take particular care to avoid any possible conflict of interest when taking departmental decisions which may impact on their constituencies. It is of course accepted that Ministers have constituency interests, and that conflicts of interest can often be resolved by distancing themselves from decisions made within their departments, but this may not always be practical, for example, for Ministers who are also members of district councils. Ministers can protect themselves against allegations of bias in favour of their constituents and the district councils of which they are members by a policy of disengagement from directly related issues, but such disengagement could result in inequality of treatment. A constituent or the district council would be deprived, unlike others, of Ministerial engagement in issues which concern them. A Minister may be failing to discharge in good faith all the duties of the office (pledge (a) of the Pledge of Office) either by ignoring a conflict of interest or by incapacity to carry out those duties by the taking of steps to avoid a conflict of interest.

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10. Paragraph 11.3 of the draft Ministerial Code, if accepted, would itself directly deal with this issue. It recommends that Ministers on appointment should normally give up any public appointments, including membership of district councils. The First Minister and deputy First Minister must be consulted if it is proposed that a public appointment be retained.
11. Ministers, in their consideration of the draft Ministerial Code, and of the personal implications of the affirmation of the Pledge of Office, need to consider whether in principle it is appropriate that membership of a district council can be retained while holding office as a Minister. Northern Ireland is small in area and electorate, and the impact of the Ministerial role is very localised; allegations of bias are easily made, and perhaps hard to refute. A strict line on the holding of district council membership and other public appointments avoids the bringing of the administration into disrepute, avoids the making of distinctions which at a popular level may be incomprehensible, and is in unquestionable conformity with the Pledge of Office. Retention of such membership must put that conformity in question.
12. While the main focus of this paper considers conflicts of interest in terms of district council membership and other public appointments, the issue can of course arise out of the private interests of Ministers. The Ministerial Code of Conduct requires Ministers to declare any personal or business interests which may conflict with their responsibilities, and the listing of any direct or pecuniary interests which members of the public might reasonably think could influence their judgement in the Assembly's Register of Interests (paragraph ix of the Code of Conduct and paragraphs 11.1 and 11.2 of the draft Ministerial Code).
13. Ministers will however need to consider whether the transparency of a declaration of their interests in the Register will be sufficient to overcome

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any allegations of bias in the discharge of their Ministerial duties. The observations of this paper on the difficulty of successfully resolving conflicts of interest in the context of membership of district councils and the Pledge of Office are relevant also to the private interests of Ministers.

14. The Executive Committee is invited to consider this advice.

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